



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

June 15, 1959

Honorable Ned Price, Chairman
Industrial Accident Board
Walton Building
Austin, Texas

Opinion No. WW-645

Re: In the event an insurance carrier makes a payment to the Second Injury Fund, as provided by Sec. 12c-2(a), Art. 8306, Vernon's Civil Statutes, and a "person entitled to compensation" later proves a valid survivor of the deceased employee, can a refund of the payment to the Second Injury Fund be voluntarily made to the insurance carrier by the Industrial Accident Board.

Dear Judge Price:

We have received your letter of May 15, 1959 in which you seek to be advised if, in the event an insurance carrier makes a payment to the Second Injury Fund, as provided by Sec. 12c-2(a), Article 8306, Vernon's Civil Statutes, and a "person entitled to compensation" later appears and proves to be a valid survivor of the deceased employee, can the Industrial Accident Board voluntarily refund the payment made to the Second Injury Fund.

Section 12c-2(a), Article 8306, Vernon's Civil Statutes reads as follows:

"In every case of the death of an employee under this Act, where there is no person entitled to compensation surviving said employee, the association shall pay to the Industrial Accident Board the sum of Three Thousand Dollars (\$3000) to be deposited with the Treasurer of the State for the benefit of said Fund and the Board shall direct the distribution thereof."

In an appropriate case, the Industrial Accident Board orders the carrier involved to make such payment to the Second Injury Fund. The carrier may appeal the order of the Board (Sec. 5, Article 8307, Vernon's Civil Statutes) or may elect to comply with the order. If the carrier does not comply with the order, legal sanctions are provided by Section 8 of Article 8306, Vernon's Civil Statutes.

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The Second Injury Fund is a Trust Fund and may be disbursed without specific appropriation as it does not come within the provisions of Section 6 of Article VIII of the Constitution of Texas (Attorney General's Opinion R-1261 to Hon. Geo. H. Sheppard, dated June 10, 1948).

Section 12d of Article 8306, Vernon's Civil Statutes authorizes the Board to review its previous awards or orders based upon a Mistake of Fact, and to change or revoke its previous order.

In our opinion, the Industrial Accident Board may issue an order revoking its award to the Second Injury Fund in an appropriate case, based upon the subsequently discovered Mistake of Fact you have set forth. In such event, the amount paid into the Fund should be refunded to the carrier making the payment.

SUMMARY

The Industrial Accident Board may revoke an order which makes an award to the Second Injury Fund (Section 12c-2(a), Article 8306, Vernon's Civil Statutes) which was based upon a mistaken fact; and may refund to the carrier any amounts paid thereunder by issuing an order revoking its previous award.

Yours very truly,

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By 
Tom I. McFarling
Assistant

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APPROVED

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